



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0111]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From the International Institute of Towing and Recovery (IITR)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant the International Institute of Towing and Recovery's (IITR's) application for a limited 5-year exemption to allow commercial motor vehicle (CMV) operators to secure automobiles, light trucks, and vans using a total of four tiedowns – two fixed and two adjustable – instead of using a minimum of two tiedowns, both of which need to be adjustable. While the Federal Motor Carrier Safety Regulations (FMCSRs) require each tiedown, or its associated connectors or its attachment mechanisms to be adjustable, the Agency has determined that the use of four tiedowns to secure light vehicles, only two of which are adjustable, will (1) prevent lateral, forward, rearward, and vertical movement of the load when in transit, and (2) provide a level of safety that is equivalent to, or greater than, the level of safety provided by the regulation.

FOR FURTHER INFORMATION CONTACT: Mrs. Amina Fisher, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-2782, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA– 21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

IITR's Application for Exemption

IITR applied for an exemption from 49 CFR 393.112 to allow CMV operators to secure automobiles, light trucks, and vans using a total of four tiedowns – two fixed and two adjustable – instead of using a minimum of two tiedowns, both of which are required to be adjustable. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.112 of the FMCSRs, “Must a tiedown be adjustable?,” states “Each tiedown, or its associated connectors, or its attachment mechanisms must be designed, constructed, and maintained so the driver of an in-transit commercial motor vehicle can tighten them. However, this requirement does not apply to the use of steel strapping.”

Section 393.128 of the FMCSRs, “What are the rules for securing automobiles, light trucks and vans?,” states in paragraph (b)(1) that “Automobiles, light trucks, and vans must be restrained at both the front and rear to prevent lateral, forward, rearward, and vertical movement using a minimum of two tiedowns.”

In its application, IITR states that the towing industry has adopted a securement method for light vehicles whereby two non-adjustable tiedowns are attached to the rear of disabled vehicle, and then “snugged up or adjusted by using the winch to remove any slack in the chains.” Two adjustable chains are used to secure the front of the disabled vehicle to the transport vehicle, and “as the front binder or ratchet is tightened up, it not only tightens up the front tiedown chain but the rear tiedown chain as well.” IITR states that this securement system will prevent any lateral, forward, rearward, and vertical movement of the disabled vehicle, and that the four-point tiedown system exceeds the minimum tiedown requirements specified in the FMCSRs. Additional information is

provided in the IITR application included in the docket referenced at the beginning of this notice.

Public Comments

On September 28, 2016, FMCSA published notice of the IITR application and requested public comment (81 FR 66728). The Agency received six comments, all in support of IITR's application. All commenters believe that the use of a four-tiedown system provides greater assurance that the transported vehicle will be properly secured to prevent lateral, forward, rearward, and vertical movement when compared to the minimally required two tiedowns permitted by the regulations. Mr. Peter O'Connell, commenting on behalf of the Towing and Recovery Association of America, the Conference of North-Eastern Towing Associations, and the Empire State Towing and Recovery Association, stated that "A non-adjustable chain is also stronger than one with a ratcheting device, which is the weakest point of the securement – a factor to be considered in a head on collision with a heavy vehicle, such as a small truck or SUV on board."

Discussion

The FMCSRs, as currently written, do not prohibit the use of a four-tiedown system to restrain automobiles, light trucks and vans. Instead, the regulations require a minimum of two tiedowns, both of which must be adjustable. However, the Agency agrees with the commenters that the use of a four-point tiedown system consisting of two fixed tiedowns and two adjustable tiedowns will provide a level of safety that is equivalent to or greater than a system that uses two adjustable tiedowns. In the

configuration described in the application, tensioning of the adjustable tiedowns on one end of the load via binders, ratchets, a winch, or the tilt of the vehicle bed will in turn provide a controlled tensioning of the other, fixed tiedowns. The use of four tiedowns in this manner will provide restraint of the transported vehicle in the lateral, longitudinal, and vertical direction as required by section 393.128(b)(1) of the FMCSRs. In addition, FMCSA notes that the use of a four-tiedown system wherein all four tiedowns are adjustable (as opposed to just two as suggested in the IITR exemption application) will provide proper securement.

FMCSA notes that in addition to the cargo securement requirements of part 393, section 392.9(b)(2) of the FMCSRs requires every driver to inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and make adjustments to the cargo or load securement devices as necessary – including adding more securement devices – to ensure that the cargo cannot shift on or within or fall from the CMV. Further, section 392.9(b)(3) of the FMCSRs requires every driver to reexamine the cargo and its load securement devices during the course of transportation and make any necessary adjustment whenever (1) the driver makes a change of duty status, (2) the CMV has been driven for 3 hours, or (3) the CMV has been driven for 150 miles, whichever occurs first.

FMCSA Decision

FMCSA has evaluated the comments received in support of IITR's application. The Agency agrees that allowing the use of four tiedowns, at least two of which are adjustable, to secure automobiles, light trucks and vans will prevent against lateral, forward, rearward, and vertical motion as required in 49 CFR 393.128. The Agency

believes that this configuration will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending [INSERT DATE FIVE YEARS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. During the temporary exemption period, motor carriers will be allowed to use a four-tiedown system, at least two of which must be adjustable, to secure automobiles, light trucks and vans under 49 CFR 393.128. The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers who use two non-adjustable tiedowns in addition to the two required adjustable tiedowns are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation

applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Issued on: May 8, 2017

Daphne Y. Jefferson
Deputy Administrator

[FR Doc. 2017-09738 Filed: 5/12/2017 8:45 am; Publication Date: 5/15/2017]